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## **Article 34.-SOLID AND HAZARDOUS WASTE**

### **65-3430. Hazardous wastes; definitions.**

As used in K.S.A. 65-3430 to 65-3447, and amendments thereto:

(a) “Department” means the Kansas department of health and environment.

(b) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(c) “Facility” means all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(d) “Generator” means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

(e) “Hazardous waste” means waste or combination of wastes which because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary to cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous waste shall not include: (1) Household waste; (2) agricultural waste returned to the soil as fertilizer; (3) mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site; (4) drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal energy; (5) fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; (6) cement kiln dust; or (7) materials listed in 40

CFR 261.4, as in effect on July 1, 1983, or any later version as established in rules and regulations adopted by the secretary.

(f) “Hazardous waste disposal facility” means a facility or part of a facility at which hazardous waste is treated, stored or disposed and at which waste will remain after closure. Such term also shall mean a hazardous waste injection well.

(g) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

(h) “Hazardous waste transfer facility” means any hazardous waste transportation-related facility, other than the location of generation or of final treatment or disposal, that, during the course of transportation, serves as an area for the accumulation, consolidation, distribution or transfer of hazardous waste shipments, including loading docks, parking areas, rail spurs and other similar areas where shipments of hazardous waste are held during the normal course of transportation. “Hazardous waste transfer facility” does not include hazardous waste disposal facilities or permitted household hazardous waste facilities.

(i) “Manifest” means the form prescribed by the secretary to be used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(j) “Modification” means the expansion or enlargement of a facility beyond the boundaries established by an existing permit or any material or substantial alteration or addition to an existing permitted facility which would justify the application of permit conditions that would be materially or substantially different from the conditions of the existing permit or are absent from the existing permit.

(k) “Monitoring” means all procedures used to (1) systematically inspect and collect samples or require information and copy records or data on the operational parameters of a facility, generator or a transporter; or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soil on or in the vicinity of a hazardous waste generator,

transporter or facility.

(l) "Off-site facility" means a facility where treatment, storage or disposal activities are conducted by a person other than the hazardous waste generator.

(m) "On-site facility" means a facility which is solely owned and operated by the generator exclusively for the treatment, storage or disposal of wastes which have been generated on the contiguous property and includes the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing and not going along the right-of-way or noncontiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access.

(n) "Permit" means the document issued to a person by the secretary which allows such person to construct and operate a hazardous waste treatment, storage or disposal facility in the state.

(o) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body.

(p) "Secretary" means the secretary of the department of health and environment.

(q) "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

(r) "Transporter" means any person who is engaged in the off-site transportation of hazardous waste by air, rail, land, highway or water.

(s) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to recover energy or material resources from the waste, to render such waste nonhazardous, or less hazardous, safer to transport, store or dispose of or amenable for recovery, amenable for storage or reduced in volume.

(t) "Waste" means any garbage, refuse, sludge or

other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage, in irrigation return flows, or solid or dissolved materials or industrial discharges which are point sources subject to permits under K.S.A. 65-165, and amendments thereto.

(u) "Acutely hazardous waste" means a commercial chemical product or manufacturing chemical intermediate having a generic name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, or any later version as established in rules and regulations adopted by the secretary; or an off-specification commercial chemical product or manufacturing chemical intermediate which, if either met specifications, would have a generic name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, or any later version as established in rules and regulations adopted by the secretary.

(v) "Underground injection" means the subsurface emplacement of fluids through a well for which a permit has been issued by the secretary.

(w) "Land treatment" means the practice of applying hazardous waste onto or incorporating hazardous waste into the soil surface so that it degrades or decomposes and renders the waste nonhazardous.

(x) "Above ground storage" means the placement of containerized hazardous waste into an above ground structure for a temporary period prior to the reuse or ultimate treatment or disposal of such waste.

(y) "Closure plan" means a written document which identifies the procedures by which the owner or operator of a hazardous waste management facility will close such facility so as to control, minimize or eliminate, to the extent necessary to prevent a threat to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall or waste decomposition products to the ground, groundwater, surface waters or to the atmosphere.

(z) "Post-closure plan" means the written document which identifies the procedures by which the owner or

operator of a hazardous waste management facility shall provide, for a minimum of 30 years, for groundwater protection, site security and maintenance of cover and leachate collection systems.

**History:** L. 1981, ch. 251, § 1; L. 1984, ch. 240, § 1; L. 1985, ch. 218, § 1; L. 1992, ch. 192, § 4; L. 1999, Ch. 129, July 1.

**65-3431. Duties and functions of secretary; standards; permits; fees.**

The secretary is authorized and directed to:

(a) Adopt such rules and regulations, standards and procedures relative to hazardous waste management as may be necessary to protect the public health and environment and enable the secretary to carry out the purposes and provisions of this act.

(b) Report to the legislature on further assistance needed to administer the hazardous waste management program.

(c) Administer the hazardous waste management program pursuant to provisions of this act.

(d) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the duties under this act.

(e) Develop a statewide hazardous waste management plan.

(f) Provide technical assistance, including the training of personnel, to industry, local units of government and the hazardous waste management industry to meet the requirements of this act.

(g) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all state agency research programs with applicable federal programs pertaining to hazardous waste management.

(h) Establish policies for effective hazardous waste management.

(i) Authorize issuance of such permits and orders, conduct inspections and collect samples or require information and copy records or data as may be necessary to implement the provisions of this act and the rules and regulations and standards adopted pursuant to this act.

(j) Conduct and contract for research and investigations in the overall area of hazardous waste storage, collection, transportation, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(k) Adopt rules and regulations establishing criteria for identifying the characteristics of hazardous waste and for listing hazardous waste. The secretary shall prepare and keep current a listing of hazardous wastes and set of characteristics based on the rules and regulations adopted pursuant to this subsection. The listing shall identify, but need not be inclusive of, all the hazardous waste subject to the provisions of this act. The criteria for identification and listing shall be consistent with the criteria for identification and listing adopted by the administrator of the United States environmental protection agency under the authority vested in the administrator by the Resource Conservation and Recovery Act of 1976 (42 USC 6921) as amended by the Solid Waste Disposal Act of 1980 (P.L. 94-482, October 21, 1980), and as amended by the Hazardous and Solid Waste Act of 1984 (P.L. 98-616, November 8, 1984).

(l) Adopt rules and regulations establishing: (1) Appropriate measures for monitoring generators, transporters and facilities during operation, closure, and after closure of such facilities to insure compliance with the rules and regulations adopted under this act and any permit issued under this act; (2) procedures to suspend operation of such generators, transporters or facilities as may be required to protect the public health and safety or the environment; and (3) appropriate measures to insure that any use of a hazardous waste disposal facility after closure will not endanger the public health or safety or the environment.

(m) Adopt rules and regulations establishing standards for hazardous waste generators including, but not limited to, notification of hazardous waste generation, reporting, recordkeeping, labeling, containerization, source separation, storage, manifests, monitoring, sampling and analysis and manner of filing notifications, reports and manifests.

(n) Adopt rules and regulations prescribing the form of the manifest and requiring such manifest to

accompany any hazardous waste collected, transported, treated, recovered or disposed of, and prescribing the contents of the manifest which shall include, but not be limited to, the quantity and composition of the hazardous waste, generator, transporter, destination, facility and the manner of signing and filing of the manifest and for the maintenance of records.

(o) Adopt rules and regulations establishing standards for routes used for transporting hazardous waste within the state with the concurrence of the state corporation commission. Such standards shall be consistent with those of the United States department of transportation and the state corporation commission, with respect to transportation of hazardous materials. Motor vehicles which are used for the transportation of hazardous waste in accordance with this act shall be exempt from the requirements of K.S.A. 66-1,108 et seq. and amendments thereto, and any rules and regulations adopted thereunder pertaining to routes which shall be under the jurisdiction of the secretary as provided in this act including any rules and regulations adopted thereunder. Otherwise such motor vehicles shall be subject to the requirements of K.S.A. 66-1,108 et seq. and amendments thereto, and any rules and regulations adopted thereunder.

(p) Adopt rules and regulations establishing standards for transporters of hazardous waste including, but not limited to, notification of hazardous waste transport, manifests, labeling, recordkeeping and the filing of reports.

(q) Adopt rules and regulations establishing standards and procedures to protect public health and the environment from any release of hazardous waste into the environment and to insure the prompt correction of any such release and damage resulting therefrom by the person transporting, handling or managing such hazardous waste.

(r) Adopt rules and regulations requiring that, for such period of time as the secretary shall specify, any assignment, sale, conveyance or transfer of all or any part of the real property upon which a hazardous waste treatment, storage or disposal facility is or has been located shall be subject to such terms and conditions as to the use of such property as the secretary shall specify

to protect human health and the environment.

(s) Adopt rules and regulations establishing a permit system which includes standards for facilities and procedures for implementation of a permit system for the construction, alteration, or operation of a hazardous waste treatment, storage or disposal facility including, but not limited to, content of applications, evidence of financial responsibility, existing hydrogeological characteristics, environmental assessment, training of personnel, maintenance of operations, qualifications of ownership, continuity of operation, public notification and participation and compliance with those standards established pursuant to subsection (t).

(t) Adopt rules and regulations establishing minimum standards for the design, location, construction, alteration, operation, termination, closing and long-term care of facilities for the treatment, storage or disposal of hazardous waste including, but not limited to, notification of hazardous waste treatment, storage or disposal, general facility standards, contingency plans, emergency procedures, manifest system, recordkeeping, inspections, monitoring, reporting, closure and postclosure plans and financial requirements. The operator of the facility shall be responsible for long-term care of the facility for 30 years after closure of the facility except that the secretary may modify the long-term care requirements for any facility when all hazardous waste is removed from the facility at closure. The secretary may extend the long-term care responsibility of any operator of a facility as the secretary may deem necessary to protect the public health and safety or the environment. Any person acquiring rights of possession or operation of any facility permitted by the secretary for the treatment, storage or disposal of hazardous waste at any time after the facility has begun to accept waste and prior to the end of the required period of long-term care shall be subject to all of the requirements, terms and conditions of the permit for the facility including all requirements relating to long-term care of the facility. The sale or acquisition of a hazardous waste disposal facility during the long-term care period shall be subject to the assignment of long-term care responsibilities as determined by the secretary.

(u) Adopt rules and regulations establishing a schedule of annual fees to be paid to the secretary by:

(1) Persons owning or operating hazardous waste treatment, storage or disposal facilities;

(2) hazardous waste transporters; or

(3) hazardous waste generators producing or bringing into existence hazardous waste in Kansas. The fees shall be for monitoring facilities both during and after operation, for monitoring generators of hazardous waste in Kansas and for monitoring the transportation of hazardous wastes. The fees shall be sufficient to reimburse the cost of the state in performing these monitoring responsibilities. The fee established under this subsection for each hazardous waste facility shall not exceed \$50,000 annually. In setting fees, the secretary may exempt those fees which would be payable by generators for hazardous waste which is treated to recover substantial amounts of either energy or materials from hazardous wastes. The secretary shall remit at least monthly any moneys collected from such fees to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the hazardous waste management fund created by section 3 and amendments thereto.

(v) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by applicants for permits to construct, modify or operate a hazardous waste facility. The fees established under this subsection shall not exceed \$175,000 for each application submitted. These fees shall be based upon resources required to review the application, the type of facility, quantity of waste processed, type of waste processed, degree of hazard and potential impact upon human health and environment.

(2) The secretary shall remit at least monthly any money collected pursuant to this subsection to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the hazardous waste management fund created by section 3 and amendments thereto.

(w) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by off-site

hazardous waste treatment and disposal facilities. In establishing fees, the secretary shall give consideration to the degree of hazard, energy content, quantity of waste, costs of treatment or disposal, and estimated future receipts. Fees shall be in an amount not to exceed \$.01 per pound of hazardous waste treated, or burned for energy or material recovery. In no event shall the fees established under this subsection exceed the following annual calendar year caps: \$60,000 for a facility which burns hazardous waste for energy or material recovery only; \$200,000 for a facility which burns hazardous waste for treatment or disposal only. Facilities which burn hazardous waste for:

(i) Energy or material recovery; and

(ii) treatment or disposal shall be subject to a total facility cap of \$200,000, which includes a separate cap of \$60,000 for hazardous wastes which are burned for energy or material recovery. The secretary shall establish a differential fee schedule for hazardous wastes based upon waste characteristics which is consistently applied to all facilities which burn hazardous wastes. In all other cases, fees shall be in an amount not to exceed \$.05 per pound of hazardous waste disposed.

(2) The secretary shall remit at least monthly any money collected pursuant to this subsection to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the hazardous waste management fund created by section 3 and amendments thereto, except that 25% of any such deposit shall be deposited to the credit of the hazardous waste collection fund created by K.S.A. 65-3460 and amendments thereto.

(x) Encourage, coordinate or participate in one or more waste exchange clearing houses for the purpose of promoting reuse and recycling of industrial wastes.

(y) Adopt rules and regulations establishing the criteria to specify when a change of principal owners or management of a hazardous waste treatment, storage or disposal facility occurs and under what circumstances and procedures a new permit shall be required to be issued to the transferees of a facility which was permitted to the transferor.

(z) Adopt rules and regulations concerning the

generation, transportation, storage, blending, marketing, burning and types of hazardous waste for which any method, technique or process to recover energy will be considered hazardous waste treatment. Such rules and regulations should specify a minimum heat value of the waste so as to ensure that a legitimate energy recovery will occur and should consider other characteristics of the waste which are appropriate to ensure that such method, technique or process for energy recovery will not pose a threat to the public health or environment.

**History:** L. 1981, ch. 251, § 2; L. 1983, ch. 286, § 5; L. 1984, ch. 240, § 2; L. 1985, ch. 218, § 2; L. 1986, ch. 240, § 1; L. 1987, ch. 295, § 6; L. 1989, ch. 48, § 87; L. 1991, ch. 198, § 1; L. 1992, ch. 272, § 7; L. 1993, ch. 274, § 5; L. 1996, ch. 253, § 16; L. 1996, ch. 253, § 17; L. 1999, Ch. 44, July 1.

#### **65-3432. Repealed.**

**History:** L. 1981, ch. 251, § 4; L. 1982, ch. 347, § 26; L. 1984, ch. 240, § 3; Repealed, L. 1992, ch. 192, § 17; July 1.

#### **65-3433. Same; permit required for construction or modification of facility; duties of secretary; timetable.**

(a) After the effective date of this act, no person shall modify or construct an off-site hazardous waste disposal facility without a permit issued by the secretary under this act.

(b) Upon receipt of an application for a permit to construct a facility which complies with the requirements of this section, the secretary shall:

(1) Publish a notice once per week for three consecutive weeks in a newspaper having major circulation in the county in which the facility is proposed to be located. The required published notice shall contain a map indicating the location of the proposed facility and shall contain a description of the proposed action and the location where the permit application and related documents may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the permit may be granted. The secretary shall transmit a copy of the notice to the clerk of any city which is located within three miles of the

proposed facility.

(2) Review the plans of the proposed facility to determine if the proposed operation complies with this act and the rules and regulations promulgated under this act. The review shall include but not be limited to air quality, water quality, waste management and hydrogeology. If the facility review, plan review, and the application meet the requirements of this act and the rules and regulations promulgated under this act, the secretary shall approve construction or modification of the facility which approval may contain conditions specifically applicable to the facility and operation. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.

(c) The secretary shall approve or deny a construction permit application within 240 days after the secretary receives an application meeting the requirements of this section except such time period shall not apply to an application for a license to be issued under the authority of K.S.A. 48-1607, and amendments thereto. If the secretary approves an application, the secretary immediately shall notify the applicant. If the secretary denies an application, the secretary shall notify the applicant in writing of the reasons for the denial. No local ordinance, permit or other requirements may prohibit the construction or modification of such a facility or restrict transportation to the facility.

**History:** L. 1981, ch. 251, § 5; L. 1984, ch. 240, § 4; L. 1992, ch. 192, § 5; July 1.

#### **65-3434. Repealed.**

**History:** L. 1981, ch. 251, § 6; L. 1988, ch. 356, § 205; Repealed, L. 1992, ch. 192, § 17; July 1.

#### **65-3435. Same; conditions precedent to approval of application.**

The secretary shall not approve any application unless the applicant has fee simple title to the property where the facility is to be located, free of any liens, easements, covenants, or any other encumbrances on the title.

**History:** L. 1981, ch. 251, § 7; L. 1982, ch. 267,



§ 4; L. 1984, ch. 240, § 5; L. 1992, ch. 192, § 6; July 1.

**65-3436. Repealed.**

**History:** L. 1981, ch. 251, § 8; L. 1984, ch. 240, § 6; L. 1986, ch. 318, § 101; Repealed, L. 1992, ch. 192, § 17; July 1.

**65-3437. Same; application for permits, contents; duties of secretary.**

(a) No person shall construct, modify or operate a hazardous waste facility or otherwise dispose of hazardous waste within this state without a permit from the secretary.

(b) The application for a permit shall contain the name and address of the applicant, the location of the proposed facility and other information considered necessary by the secretary, including proof of financial capability.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application without conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and that while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3441, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any

provision of any law referred to in this subsection or any rule or regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations.

In case of a corporate applicant, the secretary may deny the issuance of a permit if the secretary finds that the applicant or any person who holds an interest in, or exercises total or partial control of or does business with the applicant or a principal of the corporation was a principal of another corporation which would not be eligible to receive a permit because of the provisions of this act.

(d) Upon receipt of a permit application meeting the requirements of this section, the secretary or an authorized representative of the secretary shall inspect the location of the proposed facility and determine if the same complies with this act and the rules and regulations promulgated under this act. An inspection report shall be filed in writing by the secretary before issuing a permit and shall be made available for public review.

**History:** L. 1981, ch. 251, § 9; L. 1984, ch. 240, § 7; L. 1985, ch. 218, § 3; L. 1991, ch. 198, § 2; July 1.

**65-3438. Same; secretary's decision on permit application; time period, extensions.**

The secretary shall make a final decision on a permit application within 240 days of the receipt of the application unless the time for such decision has been extended by the applicant in writing or by rules and regulations adopted by the secretary for the issuance of permits under this act. In the issuance of such permits, the secretary may include conditions specifically applicable to the operation of the facility. No local ordinance, permit or other requirements may prohibit operation of a facility having a permit under this act.

**History:** L. 1981, ch. 251, § 10; L. 1992, ch. 192, § 7; July 1.

**65-3439. Same; permits, terms and conditions; revocation and suspension; appeals.**

(a) Permits for hazardous waste treatment, storage and disposal facilities shall be issued for fixed terms not to exceed 10 years.

(b) Plans, designs and relevant data for the construction of hazardous waste treatment, storage and disposal facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive the requirement that plans and designs for on-site storage or treatment facilities be prepared by a professional engineer.

(c) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of hazardous waste allowable for storage, treatment or disposal at the permitted location and, in the case of underground injection wells, minimum pretreatment standards established by the secretary.

(d) The secretary shall not issue a permit for a hazardous waste underground injection well unless such methodology is deemed the most reasonable method of disposing of the hazardous waste after considering the health and environmental effects, alternative treatment and disposal technologies and economic impact relating to such well.

(e) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary shall determine that the hazardous waste treatment, storage or disposal facility is, or has been constructed or conducted in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to the public health or safety or to the environment, or for failure to make payment of any fee to any funds created under this act. The secretary also may revoke or suspend a permit when the secretary determines that the permittee has committed, or in the case of a corporate permittee, when the permittee or any person who holds an interest in or exercises total or partial control of or does business with the permittee or a principal of the corporation is the principal of another corporation

which has committed past or continuing violations such that an original permit application would be denied under the provisions of paragraph (3) of subsection (c) of K.S.A. 65-3437, and amendments thereto.

(f) In case any permit is denied, suspended or revoked any person aggrieved by such decision may request a hearing before the secretary in accordance with K.S.A. 65-3440, and amendments thereto.

**History:** L. 1981, ch. 251, § 11; L. 1984, ch. 240, § 8; L. 1985, ch. 218, § 4; July 1.

**65-3440. Permit, revocation or suspension, hearing; judicial review.**

Any person aggrieved by any order or denial of the secretary, may within 15 days of service of the order request in writing a hearing on the order. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person adversely affected by any action of the secretary pursuant to this section may obtain review of such action in accordance with the act for judicial review and civil enforcement of agency actions.

**History:** L. 1981, ch. 251, § 12; L. 1986, ch. 318, § 102; L. 1988, ch. 356, § 206; July 1, 1989.

**65-3441. Hazardous wastes; unlawful acts, penalty.**

(a) It shall be unlawful for any person to:

(1) Dump or deposit, or permit the dumping or depositing of any hazardous waste regulated by this act into any facility which does not comply with the provisions of this act or rules or regulations, standards or orders of the secretary, but this provision shall not prohibit:

(A) The use of hazardous wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not adversely affect the public health or environment, or

(B) a generator who periodically produces a quantity of hazardous waste less than the quantity regulated under subsection (k) of K.S.A. 65-3431, and amendments thereto, from disposing such quantity of hazardous waste into a facility approved by the department which has a permit issued under K.S.A.

65-3407, and amendments thereto.

(2) Construct, modify or operate a hazardous waste storage, treatment or disposal facility without a permit or other required written approval from the secretary or to be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit issued by the secretary.

(4) Store, collect, treat or dispose of hazardous waste contrary to the rules and regulations, standards or orders of the secretary.

(5) Refuse or hinder entry, inspection, sampling and the examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of their purpose at any time.

(6) Knowingly make any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(7) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary pursuant to this act.

(8) Fail to designate on a manifest a facility which is authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(9) Transport hazardous waste to a facility which is not authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(10) Add, mix or blend any hazardous waste with fuel oil or any other fuel intended for use by residential consumers or sell such blended fuel to a residential consumer.

(11) Transport and dispose of, or cause the transportation and disposition of, hazardous waste in a manner contrary to the rules and regulations, standards or orders of the secretary. It shall not constitute a defense to the generator that the generator acted through an independent contractor in the transportation

or disposition of the hazardous waste.

(12) Operate a hazardous waste transfer facility at which hazardous waste is transferred from one or more containers to one or more different containers. The provisions of this subsection shall not apply to overpacking of hazardous waste containers when the overpack containers are marked with labels that contain all the information on the original labels.

(b) Any person who violates any provision of paragraphs (1) to (10), inclusive, of subsection (a) shall be guilty of a class A nonperson misdemeanor and, upon conviction thereof, shall be punished as provided by law. Any person who violates any provision of paragraph (11) or (12) of subsection (a) shall be guilty of a severity level 10, nonperson felony and, upon conviction thereof, shall be punished as provided by law.

(c) Any person who knowingly violates any provisions of paragraphs (1) to (12), inclusive, of subsection (a) shall be guilty of a severity level 6, nonperson felony and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation, and, upon conviction thereof, shall be punished as provided by law.

(d) Any individual who violates any of the provisions of paragraphs (1) to (12), inclusive, of subsection (a) shall be legally responsible to the same extent as if such acts were in the individual's own name or on the individual's own behalf.

(e) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary.

(f) No person shall be held responsible for failure to secure a permit under the provisions of this section for the dumping or depositing of any hazardous waste on land owned or leased by such person without their expressed or implied consent, permission or knowledge.

**History:** L. 1981, ch. 251, § 13; L. 1984, ch. 240, § 9; L. 1985, ch. 219, § 3; L. 1993, ch. 291, § 233; L. 1999, Ch. 129, July 1.

**65-3442. Same; vesting of title to hazardous**

**waste; liability for cleanup costs.**

(a) Title to hazardous waste transported, stored, treated or disposed of in accordance with the provisions of this act and the rules and regulations and standards adopted thereunder, shall vest with the owner of the hazardous waste management facility in which the waste is located, unless specific contractual arrangements are otherwise provided with the generator or contractor. Hazardous waste disposed of in ways other than in accordance with the provisions of this act remain the property of the generator and the generator is liable for removal of the waste, restoration of the area in which the wastes were disposed and the disposal of the waste in accordance with this act.

(b) A generator who transfers hazardous waste to a hazardous waste transporter for transport to an approved hazardous waste facility shall be relieved of liability for cleanup or disposal for such waste, except as otherwise provided in this act. This subsection shall not operate to relieve any contractual obligation owing to the operator of the approved hazardous waste facility or to the transporter by the generator.

(c) If a generator utilizes or arranges for unapproved transportation, storage, disposal or treatment, the generator and any person aiding or abetting the generator shall be liable for all costs resulting from cleanup, disposal or treatment of the waste.

(d) The duties, responsibilities and liabilities of this section shall apply to both intrastate and interstate shipments of hazardous waste by a generator located in the state of Kansas.

**History:** L. 1981, ch. 251, § 14; L. 1984, ch. 240, § 10; July 1.

**65-3443. Prevention or removal of hazard or pollution.**

(a) If the secretary finds that the generation, accumulation, management or disposal of a hazardous waste by any person is causing or threatens to cause pollution of the land, air or waters of the state or is or threatens to become a hazard to persons, property or public health or safety or that the provisions of this act or any rule and regulation adopted pursuant thereto

have been otherwise violated, the secretary may order the person to modify the generation, accumulation, management or disposal of the hazardous waste or to provide and implement such hazardous waste management procedures as will prevent or remove the pollution or hazard or take any other action deemed necessary. The secretary may order any person having a permit issued under this act, and who operates a public or commercial hazardous waste management facility, which the secretary finds suitable to manage the hazardous waste, to provide and implement hazardous waste management procedures to prevent or remove such pollution or hazard. Such order shall specify a fair compensation to the owner or permittee for property taken or used and shall specify the terms and conditions under which the permittee shall provide the hazardous waste management services. Any order issued shall specify the length of time after receipt of the order during which the person or permittee shall provide or implement hazardous waste management procedures or modify the generation, accumulation or management of the hazardous waste.

(b) The secretary shall adopt rules and regulations providing for approval of closure and postclosure plans, establishing standards for underground injection, land treatment, mound landfill and aboveground storage of hazardous waste.

(c) Any order of the secretary pursuant to subsection (a) is subject to hearing and review in accordance with K.S.A. 65-3440 and amendments thereto.

**History:** L. 1981, ch. 251, § 15; L. 1984, ch. 240, § 11; L. 1985, ch. 219, § 2; L. 1986, ch. 318, § 103; L. 1988, ch. 356, § 207; July 1, 1989.

**65-3444. Same; civil penalties; considerations of court; disposition of moneys.**

(a) A person who violates any provisions of this act, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$25,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In assessing the civil penalty under this section,

the district court shall consider, when applicable, the following factors:

(1) The extent to which the violation presents a substantial hazard to the health of individuals;

(2) the extent to which the violation has or may have an adverse effect upon the environment to be determined by the court according to the toxicity, degradability and dispersal characteristics of the hazardous waste disposed of or the potential for such damage if no hazardous waste has been disposed, the sensitivity of the receiving environment and the degree to which the disposal degrades existing environmental quality or the potential for such degradation if no disposal has occurred;

(3) the amount of the reasonable costs incurred by the state in detection, investigation and attempted correction of the violation;

(4) the economic savings realized by the person in not complying with the provision for which a violation is charged including, but not limited to, that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to comply with the provision violated;

(5) the quantity of the hazardous waste disposed of, if any, in a manner which constitutes a violation; and

(6) the amount which would constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) A civil action under this section may be commenced in the name of the state by the secretary or the county or district attorney of the county in which the violation is alleged to have occurred, or at the request of the secretary, by the attorney general.

(d) Any sum assessed under this section shall be deposited as ordered by the district court judge: (1) In the state general fund (2) in the hazardous waste management fund created by section 3 and amendments thereto; or (3) part in the state general fund and the balance in the hazardous waste management fund. Moneys deposited in the hazardous waste management fund under this subsection (d) shall be to reimburse such fund, to the extent practicable as determined by the district court judge, for expenditures from such fund, if

any, in the matter which gave rise to the civil action.

**History:** L. 1981, ch. 251, § 16; L. 1981, ch. 239, § 1; L. 1984, ch. 240, § 12; L. 1999, Ch. 44, July 1.

### **65-3445. Protection from hazards; orders and injunctions; judicial review.**

(a) Notwithstanding any other provision of this act, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or any rules or regulations adopted pursuant thereto or any orders issued pursuant thereto or any permit conditions required thereby, the secretary may take such action as may be necessary to protect the health of persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner, generator, transporter or operator of the storage, treatment or disposal facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. The action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in subsection (a)(1) or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection (a)(2) shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under subsection (a)(1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection (a)(3) for a court

order shall have precedence over other cases in respect to order of trial.

(b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

(c) Any order of the secretary pursuant to subsection (a)(1) is subject to hearing and review in accordance with K.S.A. 65-3440 and amendments thereto.

**History:** L. 1981, ch. 251, § 17; L. 1984, ch. 240, § 13; L. 1986, ch. 318, § 104; L. 1988, ch. 356, § 208; July 1, 1989.

**65-3446. Administrative penalties; procedure; hearing; judicial review.**

(a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of K.S.A. 65-3441 and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to

the secretary for a hearing within 15 days of service of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

**History:** L. 1981, ch. 251, § 18; L. 1984, ch. 240, § 14; L. 1986, ch. 318, § 105; L. 1988, ch. 356, § 209; July 1, 1989.

**65-3447. Same; trade secrets; duties of secretary; disclosure of information.**

Any person submitting any records, reports, documents, or information required by this act, may upon a showing satisfactory to the secretary, claim any portion of such record, report, document, or information confidential as a trade secret. "Trade secrets" as used in this section may include, but are not limited to, customer lists, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented, which is known only to certain individuals within a commercial concern using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representatives of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information. Such record, report, document, or information may be disclosed to other officers, employees or authorized representatives of the state of Kansas concerned with carrying out this act or when relevant in any proceeding under this act.

Such records, reports, documents or information may be disclosed to authorized representatives of the administrator of the United States environmental protection agency in connection with any regulation promulgated by the agency or memorandum of agreement with the department pursuant to that agency's responsibilities under the Resource Conservation and Recovery Act of 1976 (42 USC 6926). In submitting any confidential information under this subsection the secretary shall submit the claim of confidentiality to the United States environmental protection agency.

**History:** L. 1981, ch. 251, § 19; July 1.

**65-3448. Repealed.**

**History:** L. 1981, ch. 251, § 20; Repealed, L. 1984, ch. 240, § 17; July 1.

**65-3449. Same; notification of legislature and governor of site investigations for disposal of radioactive wastes; acquisition by state of physical sites, when; contracts by secretary for operation and closure of sites.**

(a) No geologic investigation to determine the suitability of any location in this state for the disposal of radioactive hazardous waste materials shall be undertaken by any person, firm, corporation or other association of persons or governmental authority, until the governor and the house of representatives and the senate of the Kansas legislature have first been notified of all the details of such proposed investigation.

(b) In order to provide for the proper care and surveillance of facilities subject to this act, the state of Kansas may acquire by gift or transfer from any person or another government agency, any and all lands, buildings, and grounds necessary to fulfill the purposes of this act, except that, with respect to any commercial radioactive waste disposal or storage facility, the state of Kansas shall acquire the lands comprising the physical site of the facility or such lands shall be owned by the federal government. Any and all lands, buildings, and grounds acquired under this section shall be owned in fee title absolute by the state of Kansas. Any such gift, acquisition or transfer is subject to approval and acceptance by the legislature.

(c) The secretary may lease, license or contract with any person to provide for the operation, closure, monitoring or maintenance of any lands, buildings or ground acquired by the state of Kansas under subsection (b) of this section.

**History:** L. 1981, ch. 251, § 3; July 1.

**65-3450. Same; intervention of interested parties in civil actions.**

If the secretary, county or district attorney or attorney general brings a civil enforcement action pursuant to this act, any person who has an interest which is or may be adversely affected, upon timely application, shall be allowed to intervene in such action pursuant to K.S.A. 60-224, and amendments thereto.

**History:** L. 1984, ch. 240, § 15; L. 1985, ch. 219, § 4; July 1.

**65-3451. Same; time schedule for regulation of generators by secretary.**

(a) Any person who generates a total of 2.2 pounds (one kilogram) or more of acutely hazardous waste, as defined by subsection (y) of K.S.A. 65-3430, and amendments thereto, in any calendar month shall be subject to regulation by the secretary pursuant to K.S.A. 65-3430 et seq., and amendments thereto.

(b) Any person who generates any hazardous waste, which is not an acutely hazardous waste, in any calendar month shall be subject to regulation by the secretary pursuant to K.S.A. 65-3430 et seq., and amendments thereto, in accordance with the following schedule:

(1) From and after July 1, 1984, all persons generating 165 pounds (75 kilograms) or more per month;

(2) from and after July 1, 1985, all persons generating 110 pounds (50 kilograms) or more per month;

(3) from and after July 1, 1986, all persons generating 55 pounds (25 kilograms) or more per month.

**History:** L. 1984, ch. 240, § 16; July 1.

**65-3452. Repealed.**

**History:** L. 1984, ch. 219, § 1; Repealed, L. 1988, ch. 256, § 7; July 1.

**65-3452a. Definition of hazardous substances.**

As used in this act, unless the context clearly requires otherwise, “hazardous substances” shall have the meaning ascribed to such term by section 101 of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1988.

**History:** L. 1988, ch. 256, § 1; July 1.

**65-3453. Authority of secretary concerning clean-up activities.**

(a) The secretary shall have the power to: (1) Determine that the clean up of a site is necessary to protect the public health or the environment;

(2) expend and authorize the expenditure of moneys from the environmental response fund;

(3) issue clean-up orders to persons responsible for the health or environmental hazard created by the hazardous substance;

(4) recover moneys from persons responsible for the health or environmental hazard created by the hazardous substance;

(5) assign personnel and equipment necessary to carry out the purpose of this act;

(6) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations.

(b) Any authorized officer, employee or agent of the department or any person under contract with the department may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to gather data, conduct investigations, or take remedial action where the secretary determines that such action is necessary to protect the public health or environment:

(1) If consent is not granted by the person in control of a site or suspected site regarding any request made by any employee or agent of the secretary under the provisions of this section, the secretary may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for

consultation as is reasonably appropriate under the circumstances;

(2) The secretary may ask the attorney general to commence a civil action to compel compliance with a request or order referred to in paragraph (1). Where there is a reasonable basis to believe there may be pollution, the court shall take the following actions:

(A) In the case of interference with entry or investigation, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or investigation unless under circumstances of the case the demand for entry or investigation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(3) All orders issued hereunder shall be subject to the provisions of K.S.A. 65-3456a and amendments thereto.

(c) The secretary is hereby authorized to adopt any rules and regulations necessary to carry out the provisions of this act.

**History:** L. 1984, ch. 219, § 2; L. 1988, ch. 256, § 3; July 1.

**65-3454. Repealed.**

**History:** L. 1984, ch. 219, § 3; Repealed, L. 1988, ch. 256, § 7; July 1.

**65-3454a. Environmental response fund created; receipts and expenditures; subaccounts.**

(a) (1) There is hereby created the environmental response fund. All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations to carry out remedial action at sites polluted by hazardous substances shall be deposited in such fund. All expenditures from the environmental response fund shall be made in accordance with appropriations acts



and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(2) The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available under laws, rules and regulations for site cleanup or other remedial action where environmental pollution is or threatens to create a health or environmental hazard.

(b) The environmental response fund shall be maintained as individual subaccounts, as follows:

(1) State appropriations or funds from other sources designated for remedial activities at specific state-lead sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for activities related to the sites at which the appropriating or donating person has designated.

(2) State appropriations or funds from other sources designated as state match for remedial activities at federal national priority list sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for remedial design and remedial action at the national priority list sites for which the appropriating or donating person has designated.

(3) State appropriations or funds from other sources designated for emergency response activities or environmental response at nonspecific sites shall be maintained in a separate account. Disbursement of funds from this account shall be made for activities at any sites polluted by hazardous substances where remedial action is necessary to protect public health or the environment.

(4) State appropriations of funds from other sources designated as state match for federal leaking underground storage tank trust fund resources used to conduct remedial action to reduce or eliminate environmental pollution from leaking underground storage tanks of petroleum or hazardous substances shall be maintained in a separate account. Disbursements of funds from this account shall be made only for remedial action to reduce or eliminate environmental pollution from leaking underground petroleum or hazardous substance storage tanks. Moneys recovered from any responsible person for

remediation to reduce or eliminate environmental pollution shall be deposited to the credit of the environmental response fund except that a proportional share may be returned to the federal source from which it came.

(c) Subject to the limitations in subsection (b), the secretary is authorized to use funds from the environmental response fund to pay the cost of:

- (1) The design and review of remedial action plans;
- (2) contracting for services needed to supplement the department's staff expertise in site investigations;
- (3) consultation needed concerning remedial action;
- (4) mitigation of adverse environmental impacts;
- (5) emergency or long-term remedial activities;
- (6) legal costs, including expert witnesses, incurred in recovery of fund expenditures;

(7) state matching costs for remedial action funded with the federal hazardous substance superfund established by section 9507 of the Internal Revenue Code of 1986; and

(8) state matching costs for remedial action funded with the federal leaking underground storage tank trust fund established by section 9508 of the Internal Revenue Code of 1986.

(d) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the pollutant discharge cleanup fund and the hazardous waste cleanup fund to the environmental response fund, and the pollutant discharge cleanup fund and the hazardous waste cleanup fund are hereby abolished.

**History:** L. 1988, ch. 256, § 2; July 1.

#### **65-3455. Responsibility for payment of clean-up costs; actions to recover costs.**

Any person responsible for the discharge, abandonment or disposal of hazardous substances which the secretary determines is necessary to be cleaned up pursuant to K.S.A. 65-3453 and amendments thereto shall be responsible for the payment of the costs of investigation to determine whether remedial action is necessary at the site. If remedial action is required to protect the public health and environment, the costs of that remedial action shall be borne by the responsible party. If the secretary incurs costs or expends funds for such activities, the

responsible person shall be notified of such costs and expenditures and shall make repayment of all costs incurred for response to the site in accordance with K.S.A. 65-3454a and amendments thereto. If the responsible person fails to pay for such costs, such payment or repayment shall be recoverable in an action brought by the secretary in the district court of Shawnee county. Any money recovered under this section shall be deposited in the environmental response fund.

**History:** L. 1984, ch. 219, § 4; L. 1988, ch. 256, § 4; July 1.

#### **65-3456. Repealed.**

**History:** L. 1984, ch. 219, § 5; L. 1986, ch. 318, § 106; L. 1988, ch. 356, § 210; Repealed, L. 1988, ch. 256, § 7; Repealed, L. 1989, ch. 198, § 1; July 1.

#### **65-3456a. Review of secretary's actions or decisions.**

(a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the act for judicial review and civil enforcement of agency actions.

**History:** L. 1988, ch. 256, § 5; July 1.

#### **65-3457. Repealed.**

**History:** L. 1984, ch. 219, § 6; Repealed, L. 1988, ch. 256, § 7; July 1.

#### **65-3457a. Existing law regarding oil and gas pollution not affected.**

Nothing in this act shall be construed to affect any existing laws concerning activities relating to the protection of surface water and groundwater from oil and gas activities.

**History:** L. 1988, ch. 256, § 6; July 1.

#### **65-3458. Burial of hazardous waste prohibited;**

#### **exceptions; procedure.**

(a) The underground burial of hazardous waste produced by persons generating quantities of such waste greater than those specified in K.S.A. 65-3451 and amendments thereto is prohibited except as provided by order of the secretary of health and environment issued pursuant to this act. Such prohibition shall not be construed as prohibiting mound landfill, aboveground storage, land treatment or underground injection of hazardous waste. Any existing hazardous waste disposal facility which utilizes underground burial shall cease such practice and, with the approval of the secretary, shall implement closure and postclosure plans for all units of the facility in which hazardous wastes have been disposed of underground.

(b) (1) The secretary shall decide whether or not an exception to the prohibition against underground burial of hazardous waste shall be granted for a particular hazardous waste. No decision to grant an exception shall be rendered unless it is demonstrated to the secretary that, except for underground burial, no economically reasonable or technologically feasible methodology exists for the disposal of a particular hazardous waste. The procedures for obtaining an exception to the prohibition against underground burial of hazardous waste shall include a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act and such other procedures as are established and prescribed by rules and regulations adopted by the secretary. Such rules and regulations shall include requirements for the form and contents of a petition desiring an exception.

(2) Within 90 days after submission of a petition desiring an exception, and if the secretary decides to grant an exception to the prohibition against underground burial of hazardous waste, the secretary of health and environment shall issue an order so providing. Any action by the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

**History:** L. 1985, ch. 219, § 1; L. 1986, ch. 318, § 107; L. 1988, ch. 356, § 211; July 1, 1989.

**65-3459. Repealed.**

**History:** L. 1986, ch. 225, § 1; Repealed, L. 1989, ch. 199, § 2; March 9.

**65-3460. Voluntary local hazardous waste programs; duties of the secretary; rules and regulations; reports.**

(a) In order to (1) provide for the safe disposal of small quantities of hazardous waste in the possession of homeowners, householders, farmers and exempt small quantity hazardous waste generators in amounts not exceeding the amount prescribed in K.S.A. 65-3451 and amendments thereto;

(2) educate the public about the dangers posed by hazardous waste; and

(3) encourage local units of government to develop local hazardous waste collection programs either individually or jointly, the secretary of health and environment may coordinate voluntary hazardous waste collection programs to ensure the safe collection and disposal of such waste.

(b) The secretary of health and environment may adopt rules and regulations for conducting both hazardous temporary and permanent waste collection programs. The secretary shall supervise the program and ensure that the local unit of government contracts with a bonded waste handling company approved by the secretary for implementation of the program.

(c) The secretary of health and environment may receive moneys for use as grants to help defray the expense of operating hazardous waste collection programs. Any money received to defray the cost of the programs shall be deposited in the state treasury and credited to the hazardous waste collection fund, which is hereby created. Costs and expenses arising from the implementation of this section shall be paid from such fund.

(d) Not later than the first day of each legislative session, the secretary of health and environment shall submit to the speaker of the house of representatives and the president of the senate a report on hazardous waste collection programs carried out under this section during the preceding calendar year.

**History:** L. 1989, ch. 199, § 1; L. 1995, ch. 221,

§ 7; July 1.

**65-3461 to 65-3470. Reserved.**

**65-3471. Definitions.**

When used in this act, the following words and phrases shall have the following meanings:

(a) “Discharge” means and includes leakage, seepage or other release.

(b) “Hazardous materials” means a substance or material which has been determined by the secretary of the United States department of transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce and which has been so designated.

(c) “Person” means and includes any individual, partnership, corporation, association or other entity.

**History:** L. 1984, ch. 220, § 1; July 1.

**65-3472. Immunity; exceptions.**

(a) Any person who renders assistance or advice concerning an emergency or accident involving threatened discharge of hazardous materials or the cleanup thereof shall not be liable for any civil damages for any acts or omissions at the scene of the emergency or accident in mitigating or attempting to mitigate the actual or threatened discharge of hazardous materials or cleanup thereof.

(b) The immunity provided in subsection (a) shall not apply to any person (1) whose act or omission caused in whole or in part such actual or threatening discharge and who would otherwise be liable therefor; or (2) who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(c) Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence or from such person's reckless, wanton or intentional misconduct.

**History:** L. 1984, ch. 220, § 2; July 1.

**65-3473 to 65-3479. Reserved.**

**65-3491. Hazardous waste management fund. (a)**

There is hereby created in the state treasury the hazardous waste management fund.

(b) Subject to the provisions of subsection (c), moneys credited to the hazardous waste management fund may be expended for the following purposes:

(1) Technical reviews of applications for permits pursuant to K.S.A. 65-3430 through 65-3460, and amendments thereto, including permit modifications and permit renewals for hazardous waste facilities;

(2) evaluating options available for minimizing the generation of hazardous wastes;

(3) completing background investigations of applicants pursuant to subsection (c) of K.S.A. 65-3437 and amendments thereto;

(4) completing site investigations pursuant to subsection (d) of K.S.A. 65-3437 and amendments thereto;

(5) assuring that a permittee pursuant to K.S.A. 65-3430 through 65-3460, and amendments thereto, fulfills all permit conditions during the effective period of the permit; and

(6) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-3430 through 65-3460, and amendments thereto, including the cost of any additional employees or increased operating costs of the department attributable thereto.

(c) Moneys credited to the hazardous waste management fund from fees established pursuant to subsection (v)(1) of K.S.A. 65-3431 and amendments thereto shall be expended only to recover costs associated with the review and processing of the permit application for which the fee was paid.

(d) On or before the 10<sup>th</sup> of each month, the director of accounts and reports shall transfer from the state general fund to the hazardous waste management fund interest earnings based on:

(1) The average daily balance of moneys in the hazardous waste management fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(e) All expenditures from the hazardous waste

management fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(f) The hazardous waste management fund shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this section and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(g) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the hazardous waste perpetual care trust fund and the environmental permit fund, created pursuant to K.S.A. 65-3431 as it existed immediately before the effective date of this act, to the hazardous waste management fund. On the effective date of this act, all liabilities of the hazardous waste perpetual care trust fund and the environmental permit fund are hereby transferred to and imposed upon the hazardous waste management fund. On the effective date of this act, the hazardous waste perpetual care trust fund and the environmental permit fund are hereby abolished.

**History:** L. 1999, ch. 44, § 3; July 1.

## Article 31.--Hazardous Waste Management Standards and Regulations.

**28-31-1. General Provisions.** (a) Any reference in this article to standards, procedures, or requirements of 40 CFR parts 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, 273, or 279 as in effect on July 1, 1996, and 49 CFR Parts 172, 173, 178, or 179, as in effect on October 1, 1996, inclusive shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any associated notes and appendices, unless otherwise specifically stated in these rules and regulations.

(b) When used in any provision adopted from 40 CFR Parts 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, 273, or 279 as in effect on July 1, 1996, inclusive, references to "the United States" shall be replaced with "the state of Kansas," "environmental protection agency" shall be replaced with the "Kansas department of health and environment," "administrator" or "regional administrator" shall be replaced with the "secretary" and "Federal Register" shall be replaced with the "Kansas Register." (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-2. Definitions.** (a) **Incorporation.** 40 CFR 260, subpart B, as in effect on July 1, 1996, is adopted by reference.

(b) **"Disposal authorization"** means approval from the secretary to dispose of hazardous waste in Kansas.

(c) **"EPA generator"** means any person who meets any of the following conditions:

(1) Generates in any single calendar month 1,000 kilograms (2,200 pounds) or more of hazardous waste;

(2) accumulates at any time 1,000 kilograms (2,200 pounds) or more of hazardous waste;

(3) generates in any single calendar month 1 kilogram (2.2 pounds) or more of acutely hazardous waste;

(4) accumulates at any time 1 kilogram (2.2 pounds) or more of acutely hazardous waste;

(5) generates in any single calendar month 25 kilograms (55 pounds) or more of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of any acutely hazardous waste; or

(6) accumulates at any time 25 kilograms (55 pounds) or more of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste.

(d) **"Kansas generator"** means any person who meets all of the following conditions:

(1) Generates in any single calendar month 25 kilograms (55 pounds) or more and less than 1,000 kilograms (2,200 pounds) of hazardous waste;

(2) accumulates at any time less than 1,000 kilograms (2,200 pounds) of hazardous waste;

(3) generates in any single calendar month less than 1 kilogram (2.2 pounds) of acutely hazardous waste;

(4) accumulates at any time less than 1 kilogram (2.2 pounds) of acutely hazardous waste;

(5) generates in any single calendar month less than 25 kilograms (55 pounds) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste; and

(6) accumulates at any time less than 25 kilograms (55 pounds) of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of acutely hazardous waste.

(e) **"Small quantity generator"** means any person who meets both of the following conditions:

(1) Generates in any single calendar month less than 25 kilograms (55 pounds) of hazardous waste; and

(2) meets the conditions of a Kansas generator listed in paragraphs (d)(2) through (d)(6) of this regulation.

(f) **Differences between state and federal definitions.** When the same word is defined both in the Kansas statutes or these regulations and in any federal regulation adopted by reference in these rules and

regulations and the definitions are not identical, the definition prescribed in the Kansas statutes or regulations shall control. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985, amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-3. Identification of Characteristics and Listing of Hazardous Waste. (a) Incorporation.** 40 CFR Part 261, as in effect on July 1, 1996, is adopted by reference, except for 261.5.

**(b) Rulemaking petitions.** 40 CFR Part 260, subpart C, except for 260.21 and 260.22, as in effect on July 1, 1996, is adopted by reference. A reevaluation of a petition that has previously been approved may be conducted by the department at any time for just cause. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-4. Standards for Generators of Hazardous Waste. (a) Purpose, scope and applicability.** Each generator of hazardous waste and each person who imports hazardous waste into Kansas shall comply with this regulation. In addition, each owner or operator of a treatment, storage, or disposal facility who initiates a shipment of hazardous waste shall comply with this regulation.

**(b) Hazardous waste determination.** Each person who generates solid waste, as defined by 40 CFR 261.2, as in effect on July 1, 1996, shall determine if that waste is a hazardous waste using all of the following methods.

(1) Each person shall first determine if the waste is excluded from regulation under 40 CFR 261.4, as in effect on July 1, 1996.

(2) If the waste is not excluded under paragraph (b)(1), the person shall next determine if the waste is listed as a hazardous waste in 40 CFR 261, subpart D, as in effect on July 1, 1996.

(3) If the waste is not listed as a hazardous waste in 40 CFR 261, subpart D, as in effect on July 1, 1996, the person shall determine whether or not the waste is identified in 40 CFR 261, subpart C, as in effect July 1, 1996, by one of the following means:

(A) Submitting the waste for testing according to the methods in 40 CFR 261, subpart C, as in effect on July 1, 1996, by a laboratory that is certified for these analyses by the department; or

(B) applying knowledge of the hazardous characteristics of the waste in light of materials or processes used.

(4) If the waste is determined to be hazardous, the generator shall refer to 40 CFR Parts 261, 262, 264, 265, 266, 268, and 273, as in effect on July 1, 1996, for possible exclusions or restrictions pertaining to management of each specific waste.

**(c) EPA identification numbers.**

(1) Each Kansas or EPA generator shall apply for and obtain an EPA identification number from the department before treating, storing, disposing, transporting, or offering for transportation any hazardous waste. Each generator who has not received an EPA identification number shall apply to the department using a form supplied by the department. Whenever there is a change in the information originally submitted to obtain an EPA identification number, the generator shall update that information. The generator shall submit these changes to the department on KDHE form 8700-12.

(2) Each Kansas or EPA generator shall offer hazardous waste only to transporters or to treatment, storage, or disposal facilities that have an EPA identification number.

**(d) Manifest requirements.**

(1) General requirements. Each Kansas or EPA generator who transports hazardous waste or offers

hazardous waste for transportation for off-site treatment, storage, or disposal shall prepare and use a manifest with the OMB control number 2050-0039 that complies with EPA form 8700-22, and if necessary, form 8700-22A, according to the instructions included in the appendix to 40 CFR Part 262, as in effect on July 1, 1996. The generator shall comply with all of the following requirements.

(A) Each generator shall designate on the manifest one facility permitted to handle the waste described on the manifest.

(B) Any generator may also designate on the manifest one alternate facility permitted to handle the waste if an emergency prevents delivery of the waste to the primary designated facility.

(C) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(2) Acquisition of manifests. If the shipment is to be transported to a state requiring use of that state's manifest, then the generator shall use the manifest of the consignment state. If the consignment state does not supply the manifest, then the generator may obtain the manifest from any source.

(3) Number of copies. At a minimum, the manifest shall have sufficient copies to provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for the records and another copy to be returned to the generator.

(4) Use of the manifest. The generator shall perform all of the following:

(A) Sign the manifest certification by hand;

(B) obtain the handwritten signature of the initial transporter and the date of acceptance on the manifest;

(C) retain one copy for the generator's records; and

(D) give the transporter the remaining copies of the manifest.

(5) Water shipments. When bulk shipments of only hazardous waste are transported within the United States solely by water, the generator shall send three copies of the manifest, dated and signed in accordance with this subsection, to the owner or operator of the

designated facility or the last bulk water transporter to handle the waste in the United States if exported by water. Copies of the manifest shall not be required for any transporter.

(6) Rail shipments. When rail shipments of hazardous waste within the United States originate at the site of generation, the generator shall send at least three copies of the manifest, dated and signed in accordance with this subsection, to one of the following:

(A) The next non-rail transporter, if any;

(B) the designated facility, if transported solely by rail; or

(C) the last rail transporter to handle the waste in the United States, if exported by rail.

(7) Manifest exemption. The requirements of this subsection shall not apply to Kansas generators when the waste is reclaimed under a contractual agreement that meets all of the following requirements:

(A) The type of waste and frequency of shipments are specified in the agreement.

(B) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste.

(C) The generator maintains a copy of the reclamation agreement for at least three years after termination or expiration of the agreement.

**(e) Pre-transport requirements.**

(1) Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall package the waste in accordance with 49 CFR Parts 173, 178, and 179, as in effect on October 1, 1996.

(2) Labeling. Before transporting or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall label each package in accordance with 49 CFR Part 172, as in effect on October 1, 1996.

(3) Marking.

(A) Before transporting or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall mark each package of hazardous waste in accordance with 49 CFR Part 172, as in effect on October 1, 1996.

(B) Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall mark each container of 110 gallons or less used in transportation in accordance with the requirements of 40 CFR 262.32(b), as in effect on July 1, 1996.

The required statement and information shall be displayed in accordance with the requirements of 49 CFR 172.304, as in effect on October 1, 1996.

(4) Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, each Kansas or EPA generator shall placard or offer the initial transporter the appropriate placards according to 49 CFR 172, subpart F, as in effect on October 1, 1996.

**(f) Record keeping and reporting.**

**(1) Record keeping.**

(A) Each Kansas or EPA generator shall keep a copy of each signed manifest. This signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter or until receipt of a copy signed by a representative of the designated facility that received the waste. The copy signed by the designated facility shall be retained as a record for at least three years from the date on which the waste was accepted by the initial transporter.

(B) Each Kansas or EPA generator shall keep a copy of each exception report required by paragraph (f)(4) of this regulation, and each EPA generator shall keep a copy of each biennial report required by paragraph (f) (2) of this regulation. Each Kansas or EPA generator shall keep these reports for a period of at least three years from the due date of the reports.

(C) Each Kansas or EPA generator shall keep records of all test results, waste analyses, and other determinations for at least three years from the date that the waste was last sent for on-site or off-site treatment, storage, or disposal.

(D) The periods for retention referred to in this regulation shall be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the secretary.

**(2) Biennial report.**

(A) Each EPA generator shall prepare and submit

a single copy of a biennial report to the secretary by March 1 of each even-numbered year. The EPA generator shall submit the biennial report on a form provided by the department and shall cover generator activities during the previous calendar year or years. The biennial report shall include the following information:

(i) The EPA identification number, name, and address of the generator;

(ii) the calendar year or years covered by the report;

(iii) the EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped. For exported shipments, the report shall give the name and address of the foreign facility;

(iv) the name and EPA identification number of each transporter used;

(v) a description of the waste and the EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site. This information shall be listed by EPA identification number of each off-site treatment, storage, or disposal facility to which waste was shipped;

(vi) a description of the efforts undertaken to reduce the volume and toxicity of waste generated;

(vii) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent that this information is available; and

(viii) the certification signed by the generator or authorized representative.

(B) Each generator who treats, stores, or disposes of hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of 40 CFR Parts 270, 264, 265, and 266, as in effect on July 1, 1996.

(3) Annual monitoring fee reports. Each EPA generator shall prepare and submit a report to the secretary by March 1 of each year that details the total quantities of hazardous waste produced during the previous calendar year. The generator shall pay and submit the monitoring fee required by K.A.R. 28-31-10(g) with the report.



(4) Exception reporting.

(A) Each Kansas or EPA generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date on which the waste was accepted by the initial transporter, shall contact the transporter, the owner or operator of the designated facility, or both, to determine the status of the hazardous waste.

(B) Each Kansas or EPA generator who has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date on which the waste was accepted by the initial transporter shall submit an exception report to the secretary. The exception report shall include both of the following:

- (i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and
- (ii) a cover letter signed by the generator or authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(5) Additional reporting. At any time, a generator may be required by the secretary to furnish additional reports concerning the quantities and disposition of hazardous wastes.

**(g) Accumulation time for EPA generators.**

Any EPA generator may accumulate hazardous waste on-site for 90 days or less without a permit or without obtaining interim status, and shall be exempt from all the requirements in 40 CFR 265, subparts G and H, except for 265.111 and 265.114, as in effect on July 1, 1996, if all of the following conditions are met:

(1) The waste is handled using one of the following methods:

(A) Placed in containers and the generator complies with 40 CFR 265, subpart I, as in effect on July 1, 1996;

(B) placed in tanks and the generator complies with 40 CFR 265, subpart J, except sections 265.197(c) and 265.200, as in effect on July 1, 1996;

(C) collected on drip pads and the generator complies with 40 CFR 262.34(a)(1)(iii)(A) and (B) and 40 CFR 265, subpart W, as in effect on July 1, 1996;

or

(D) placed in containment buildings and the generator complies with 40 CFR 262.34(a)(1)(iv)(A) and (B) and 40 CFR 265, subpart DD, as in effect on July 1, 1996.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank.

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste".

(4) The generator complies with the requirements in 40 CFR 265, subparts C and D, with 265.16, and, if conducting treatment, with 268.7(a)(4), as in effect on July 1, 1996.

**(h) Hazardous waste accumulation by Kansas generators.**

(1) Any Kansas generator may accumulate hazardous waste on-site without a permit, interim status, or time restrictions, and shall be exempt from all the requirements in 40 CFR 265, subparts G and H, except for 265.111 and 265.114, as in effect on July 1, 1996, if all of the following conditions are met:

(A) The quantity of waste accumulated never exceeds 1,000 kilograms of hazardous waste or 1 kilogram of acutely hazardous waste. If at any time more than these quantities are accumulated, all of those accumulated wastes shall be subject to regulations that are applicable to EPA generators.

(B) The waste is handled using one of the following methods:

(i) Placed in containers and the generator complies with 40 CFR 265 subpart I, except 265.176 and 265.178, as in effect on July 1, 1996;

(ii) placed in tanks and the generator complies with 40 CFR 265, subparts J, AA, and BB, except 265.197(c), 265.200, 265.201, and 265.202, as in effect on July 1, 1996; or

(iii) collected on drip pads and the generator complies with 40 CFR 262.34(a)(1)(iii)(A) and (B) and 40 CFR 265 subpart W, as in effect on July 1, 1996.

(C) The date upon which each period of accumulation begins is clearly marked and visible for inspection.

(D) While being accumulated on-site, each container and tank is labeled or clearly marked with the words "Hazardous Waste."

(E) At least one employee who is designated as the emergency coordinator is either on the premises or on call at all times with the responsibility for coordinating all emergency response measures specified in this section. For the purposes of this regulation, "on call" means that the emergency coordinator is available to respond to an emergency by reaching the facility within a short period of time.

(F) All of the following information is posted next to at least one telephone that is immediately accessible by employees during an emergency:

- (i) The name and telephone number of the emergency coordinator;
- (ii) the location of fire extinguishers and spill-control material, and if present, fire alarms; and
- (iii) the telephone number of the fire department unless the facility has a direct alarm.

(G) Each employee is thoroughly familiar with proper waste handling and emergency procedures that are relevant to the employee's responsibilities during normal facility operations and emergencies.

(H) The emergency coordinator or designee is prepared to respond to any emergencies that arise. The appropriate responses shall be the following: (i) In the event of a fire, the emergency coordinator or designee shall call the fire department or attempt to extinguish the fire using a fire extinguisher.

(ii) In the event of a spill, the emergency coordinator or designee shall contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release that could threaten human health outside the facility, or when it appears that a spill has reached surface water, the emergency coordinator shall immediately notify the national response center using the 24-hour toll-free number 800-424-8802.

(2) All reports to the national response center shall contain the following information:

(A) The name, address, and U.S. EPA identification

number of the generator;

(B) the date, time, and type of incident;

(C) the quantity and type of hazardous waste involved in the incident;

(D) the extent of any injuries; and

(E) the estimated quantity and disposition of recovered materials, if any.

**(i) Extension of accumulation time.** Each EPA generator who accumulates hazardous waste for more than 90 days shall be considered an operator of a storage facility and shall be subject to the requirements of 40 CFR Parts 124, 264, 265 and 270, as in effect on July 1, 1996, unless granted an extension to the 90-day period. This extension may be granted if hazardous wastes need to remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted by the secretary upon written request by the EPA generator. Additional extensions not to exceed 30 days may be granted if the circumstances continue to be valid.

**(j) Satellite accumulation areas.**

(1) Any Kansas or EPA generator may accumulate as many as 55 gallons of each type of hazardous waste or one quart of acutely hazardous waste in no more than one container at or near any point of generation where wastes initially accumulate, and that is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsections (g) and (h), if the generator performs both of the following:

(A) Complies with 40 CFR 265.171, 265.172, and 265.173(a), as in effect on July 1, 1996; and

(B) marks the containers with the words "Hazardous Waste."

(2) At the time the generator accumulates more than the amounts listed in this subsection at any satellite accumulation area, the date shall be placed on the full container. This date shall become the accumulation start date for this container, and the generator shall move the full container to the hazardous waste storage area within three days. The empty container in which waste is accumulated at the satellite area shall be managed in accordance with paragraph (j)(1) of this

subsection.

**(k) Inspection requirement.** Each Kansas or EPA generator shall document weekly inspections of hazardous waste storage areas and daily inspections of tanks in accordance with 40 CFR 265.15(d) and 40 CFR 265.195, as in effect on July 1, 1996.

**(l) Transportation restrictions.** Each Kansas or EPA generator shipping hazardous waste or offering hazardous waste for transport shall use only a transporter who has properly registered with the department according to K.A.R. 28-31-6.

**(m) Small quantity generator requirements.** Small quantity generators shall be subject to the following requirements:

(1) If at any time more than a total of 1,000 kilograms of hazardous waste or one kilogram of acutely hazardous waste is accumulated, all of those accumulated wastes shall be subject to regulations applicable to EPA generators. Upon exceeding 1,000 kilograms of hazardous waste or one kilogram of acutely hazardous waste, all requirements of subsection (g) of this regulation shall apply to the generator.

(2) Each small quantity generator who accumulates 25 kilograms or more of hazardous waste shall either recycle, treat or dispose of the waste in an acceptable on-site facility, or ensure delivery to an off-site hazardous waste treatment, storage, or disposal facility, or to some other waste management facility approved by the secretary, and shall be subject to the following requirements:

(A) The pre-transport requirements of subsection (e) of this regulation;

(B) the container and tank, dating, and marking requirements of paragraphs (h)(B), (C), and (D) of this regulation; and

(C) the inspection requirements of subsection (k) of this regulation.

(3) Each small quantity generator who accumulates up to 25 kilograms of hazardous waste may either treat or dispose of hazardous waste in an acceptable on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility. In either case, the facility shall meet at least one of the following requirements:

(A) Be permitted to manage hazardous waste;

(B) be operating under interim status;

(C) be permitted to manage solid waste; or

(D) beneficially treat, use or reuse, or legitimately recycle or reclaim its waste.

**(n) Acutely hazardous waste requirements.**

(1) All quantities of acutely hazardous waste shall be subject to this regulation and other regulations regarding transportation, treatment, storage, and disposal of hazardous waste if generated in one of the following quantities:

(A) A total, in any single calendar month, of one kilogram or more of acutely hazardous waste; or

(B) a total, in any single calendar month, of 25 kilograms or more of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acutely hazardous waste.

(2) If at any time acutely hazardous waste is accumulated in quantities greater than those described in paragraph (n)(1), all of those accumulated wastes shall be subject to the requirements of this regulation and other regulations regarding transportation, treatment, storage, and disposal of hazardous waste. Upon exceeding these quantities, all requirements of subsection (g) shall apply to the generator.

**(o) Quantity determinations.**

(1) In determining the quantity of hazardous waste generated each calendar month, a generator shall not include either of the following:

(A) Hazardous waste when it is removed from on-site storage; or

(B) hazardous waste produced by on-site treatment including reclamation of hazardous waste, as long as the hazardous waste that is treated or reclaimed is counted each time before treatment or reclamation.

(2) Hazardous waste that is subject to the requirements of 40 CFR 261.6(b) and (c), as in effect on July 1, 1996, and 40 CFR 266, subparts C and F, as in effect on July 1, 1996, shall be included in the quantity determination and shall be subject to the requirements of this regulation.

**(p) Mixtures of hazardous waste.**

(1) Whenever two or more hazardous wastes are mixed together, the resulting mixture shall be regulated

as follows:

(A) If a listed hazardous waste as defined by 40 CFR 261, subpart D, as in effect on July 1, 1996, is mixed with other listed hazardous waste, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment, and disposal by all listed hazardous waste numbers contained in the mixture.

(B) If a characteristic hazardous waste as defined by 40 CFR 261, subpart C, as in effect on July 1, 1996, is mixed with other characteristic hazardous waste, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment, and disposal by all characteristic hazardous waste numbers contained in the mixture. (i) Any person may demonstrate that mixing two different characteristic hazardous wastes is a satisfactory treatment method that results in the mixture no longer exhibiting any characteristic of hazardous waste.

(ii) Upon submittal of an acceptable demonstration, written approval indicating that the resulting mixture is not regulated as hazardous waste may be granted by the department.

(C) If a listed hazardous waste as defined by 40 CFR 261, subpart D, as in effect July 1, 1996, is mixed with characteristic hazardous waste as defined by 40 FR 261, subpart C, as in effect on July 1, 1996, the resulting mixture shall be identified for purposes of generation, transportation, storage, treatment and disposal by all listed and characteristic hazardous waste numbers contained in the mixture.

(2) Whenever hazardous waste is mixed with solid waste or nonhazardous material, other than used oil, the resulting mixture shall be regulated as follows:

(A) For characteristic hazardous waste as defined by 40 CFR 261, subpart C, as in effect on July 1, 1996, remain regulated as a characteristic hazardous waste.

(i) Any person may demonstrate that mixing characteristic hazardous waste with solid waste or nonhazardous materials is a satisfactory treatment method that results in the mixture no longer exhibiting any characteristic of hazardous waste.

(ii) Upon submittal of an acceptable demonstration,

written approval indicating that the resulting mixture is not regulated as hazardous waste may be granted by the department.

(B) For listed hazardous waste, as defined by 40 CFR 261, subpart D, as in effect July 1, 1996, the resulting mixture shall remain regulated as a listed hazardous waste unless it is listed solely because it exhibits one or more characteristics of hazardous waste identified in 40 CFR 261, subpart C, as in effect July 1, 1996, and the resulting mixture no longer exhibits these characteristics.

(3) Hazardous waste that is mixed with used oil shall be regulated as follows:

(A) If hazardous waste from a small quantity generator is mixed with used oil, the resulting mixture shall be subject to regulation as used oil under K.A.R. 28-31-16.

(B) If a Kansas or EPA generator mixes a characteristic or listed hazardous waste with used oil, the resulting mixture shall remain identified as a characteristic or listed hazardous waste.

(4) Small quantity generators may mix their hazardous waste with nonhazardous waste or other material and remain subject to the requirements of subsection (m) even though the resultant mixture exceeds the quantity limitations of subsection (m), unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR 261, as in effect on July 1, 1996.

**(q) Exports of hazardous waste.** 40 CFR 262, subpart E, as in effect on July 1, 1996, is adopted by reference.

**(r) Imports of hazardous waste.** 40 CFR 262, subpart F, as in effect on July 1, 1996, is adopted by reference.

**(s) Farmers.** 40 CFR 262, subpart G, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982, amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996;

amended June 4, 1999.)

**28-31-5. Underground Burial of Hazardous Waste Prohibited.** (a) Exception requests to the prohibition against underground burial of hazardous waste. Any person may petition the secretary to be granted an exception to the prohibition against underground burial of hazardous waste. Each request shall include the following:

(1) A complete chemical and physical analysis of the waste;

(2) a list and description of all technologically feasible methods which could be considered to treat, store or dispose of the waste;

(3) for each method described in paragraph (2), an economic analysis based upon a 30-year time period. The analysis shall determine the costs associated with treating, storing, disposing and monitoring the waste during this time period; and

(4) a demonstration that no economically reasonable or technologically feasible methodology exists for the disposal of that specific hazardous waste except for underground burial.

**(b) Public notice and hearing for exception requests.** Upon receipt of a request for an exception to the prohibition against underground burial of hazardous waste, the following actions shall be initiated:

(1) The request shall be reviewed by the department to determine if it is complete and does not contain any deficiencies. If the request is not adequate, the person shall be notified of the specific deficiencies.

(2) Upon receipt of a complete request, a notice shall be published by the secretary once per week for three consecutive weeks in a newspaper having major circulation in the county in which the exception is requested. The required published notice shall:

(A) identify the applicant and the specific waste along with a description of proposed disposal methods;

(B) include a map indicating the location of proposed underground burial;

(C) include the address of the location where the application and related documents may be reviewed and of the location where copies may be obtained; and

(D) described the procedure by which the request

will be reviewed, including a date and place for a public hearing.

(3) The public hearing shall be scheduled no sooner than 30 days from the date of the first public notice.

(4) A copy of the notice shall also be transmitted by the secretary to the clerk of any city which is located within three miles of the proposed underground burial site.

(5) A notice shall also be published by the secretary in the Kansas Register once per week for three consecutive weeks. That notice shall contain the same information required above.

(6) A public hearing shall be conducted at a location near the proposed underground burial facility.

(A) A hearing officer who is responsible for its scheduling and orderly conduct may be designated by the secretary.

(B) Any person may submit oral or written comments and data concerning the exception request. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(C) The public comment period shall automatically be extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

(D) A tape recording or written transcript of the hearing shall be made available to the public.

(E) The hearing officer shall submit a report to the secretary detailing all written and oral comments submitted during the public comment period. The report may also recommend findings and determinations.

**(c) Approval or denial of exception request.**

(1) If it is determined that the exception request should be approved, an order shall be issued by the secretary. The order may require such conditions as the secretary deems necessary to protect public health and environment.

(2) If it is determined that there is not sufficient evidence to approve the request, the applicant shall be notified of the reasons why the request is denied.

(3) A public notice of the final decision to grant or deny the exception request shall be published in the newspaper having major circulation in the county in

which the exception was requested and in the Kansas Register.

(4) A copy of the final decision shall be transmitted to the clerk of any city which is located within three miles of the proposed underground burial site by the secretary. (Authorized by and implementing K.S.A. 65-3431; and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended, Feb. 5, 1990; amended April 25, 1994.)

**28-31-6. Standards for transporters of hazardous waste and used oil.** Subsections (a) through (f) of this regulation shall apply to each person that transports more than 25 kilograms of hazardous waste or more than one kilogram of acutely hazardous waste, except small quantity generators transporting to a Kansas household hazardous waste facility that has a permit, issued by the department, to handle small quantity generator waste. Subsections (b) through (d) of this regulation shall apply to each person that is subject to the requirements for used oil transporters of 40 CFR 279.40 and 279.42, as in effect on July 1, 1996.

**(a) Incorporation.** 40 CFR Part 263, except 263.10(a), and 263.20(h), as in effect on July 1, 1996, is adopted by reference.

**(b) Registration.** Each person transporting hazardous waste or used oil within, into, out of, or through Kansas shall register with the department.

(1) The transporter shall submit the registration application on forms provided by the department.

(2) The transporter shall obtain written acknowledgment from the department that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.

(3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment for review upon request.

**(c) Insurance requirements.** Each transporter shall secure and maintain liability insurance on all vehicles transporting hazardous waste or used oil in

Kansas.

(1) The limits of insurance shall not be less than \$1 million per person and \$1 million per occurrence for bodily injury or death and \$1 million for all damages to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than \$1 million.

(2) If any coverage is reduced or canceled, the transporter shall notify the department in writing at least 35 days before the effective date of that action. (3) The transporter shall, before the expiration date of the policy, provide the department with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date

**(d) Denial, suspension or revocation of registration.** Any application may be denied and any transporter's registration may be revoked or suspended by written notice if the department determines that one or more of the following apply:

(1) The transporter failed or continues to fail to comply with any of the provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health, including regulations issued thereunder in this or any other state or by the federal government, or any condition of any permit or license issued by the secretary.

(2) The transporter has shown a lack of ability or intention to comply with one or more provisions of any law referred to in this subsection, or any regulation or order or permit issued pursuant to any such law, as indicated by past or continuing violations.

(3) The transporter, or any person who holds an interest in the transporter, who exercises total or partial control the transporter or is a principal of the parent corporation, is a principal of another corporation which would not be eligible for registration.

**(e) Exemption from the manifesting requirement.** Any transporter transporting hazardous waste from a Kansas generator shall be exempt from the requirements of 40 CFR 263, subpart B, as in effect on July 1, 1996, if all of the following conditions are met:

(1) The waste is transported pursuant to a reclamation agreement as provided for in K.A.R. 28-

31-4(d)(7).

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(A) The name, address, and EPA identification number of the generator of the waste;

(B) the quantity of the waste accepted;

(C) all shipping information required by the U.S. department of transportation; and

(D) the date the waste is accepted.

(3) The transporter carries this record when transporting the waste to the reclamation facility.

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

**(f) Transportation restrictions.** Each transporter shall collect or transport hazardous waste only for generators or treatment, storage or disposal facilities that have provided proper notification in accordance with K.A.R. 28-31-4(c) and 40 CFR 264.11 and 265.11, as in effect on July 1, 1996. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982, amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-7. Standards for routing of hazardous waste. (a) Standards for preferred routes.** Each transporter of hazardous waste shall ensure that any vehicle containing hazardous waste is operated over routes that minimize risk to public health and safety. The transporter shall consider available information on accident rates, transit time, population density and activities, time of day, and day of week during which transportation will occur to select a preferred route. Any transporter of hazardous waste may deviate from a preferred route under any of the following circumstances:

(1) Emergency conditions which make continued use of the preferred route unsafe;

(2) To make necessary rest, fuel, and vehicle repair stops; or

(3) To the extent necessary to pickup, deliver, or transfer hazardous wastes.

**(b) Transporter responsibility.** Each transporter shall bear the responsibility of confining the carriage of hazardous wastes to preferred routes. Unless notice to the contrary is given to the transporter or published in the "Kansas Register", all portions of the major highway system may be used. The major highway system is considered to be all interstate routes, U.S. highways, state highways, and temporary detours designated by the Kansas department of transportation. An interstate system bypass or beltway around a city shall be used when available. (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective, May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended, May 1, 1985.)

**28-31-8. Standards for hazardous waste storage, treatment, and disposal facilities. (a) Incorporation.** 40 CFR Parts 264 and 265, except 40 CFR 264, subpart S and subpart CC and 40 CFR 265, subpart CC, as in effect on July 1, 1996, are adopted by reference.

**(b) Marking requirements.** Each operator of a hazardous waste container or tank storage facility shall mark all containers and tanks in accordance with the standards of K.A.R. 28-31-4(g)(3).

**(c) Notice in deed to property.** Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the county register of deeds where the property is located that the land has been used to manage hazardous waste and that all records regarding permits, closure, or both are available for review at the department.

**(d) Restrictive covenants and easements.**

(1) Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located may be required by the secretary to execute and file with the county register of deeds a restrictive covenant to run with the land that shall specify the uses that may be made after closure and require all of the following:

(A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of

waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the post-closure maintenance period.

(B) The owner or tenant shall preserve and protect all permanent survey markers and benchmarks installed at the facility.

(C) The owner or tenant shall preserve and protect all environmental monitoring stations installed at the facility.

(D) The owner or tenant, subsequent property owners or tenants, and any person granted easement to the property, shall provide written notice to the department during planning of any improvement to the site and shall receive approval from the department before commencing excavation or construction of permanent structures or drainage ditches, alteration of contours, removal of waste materials stored on the site, changes in vegetation grown on areas used for waste disposal, the production or sale of food chain crops grown on land used for waste disposal, or removal of security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.

(2) The owner of the property on which a hazardous waste treatment, storage, and disposal facility is located may be required by the secretary to execute an easement stating that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following:

(A) Complete items of work specified in a site closure plan required to be submitted by K.A.R. 28-31-8;

(B) perform any item of work necessary to maintain or monitor the area during the post-closure period; or

(C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or post-closure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by these regulations or the site permit authorized and issued under K.S.A. 1997 Supp. 65-3431(s), and

amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary. Recording fees shall be paid by the owner of the property.

**(e) Hazardous waste injection wells.**

(1) Each hazardous waste injection well shall be designed, constructed, and operated to comply with applicable requirements of K.A.R. 28-46-1 et seq.

(2) Wastes received from multiple generators by a hazardous waste facility, even if treated at the hazardous waste facility before injection, shall be batch-tested and the chemical composition confirmed by laboratory analyses before injection.

(A) Laboratory analysis of the composition of homogeneous and continuously generated injection fluids generated and disposed at a single site may be allowed on a monthly basis.

(B) The results of the laboratory analysis shall be the basis upon which the secretary determines whether injection of the fluids may occur.

(3) Monitoring shall be required for each constituent that was approved for injection. Monitoring of specified indicator constituents rather than the approved list of constituents may be allowed by the secretary, and monitoring of other constituents may be required as deemed necessary.

**(f) Environmental monitoring.** All samples analyzed in accordance with 40 CFR 264 and 265, subparts F and G, as in effect on July 1, 1996, shall be conducted by a laboratory certified for these analyses by the department.

**(g)** For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the department. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective



May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-8a. Revoked.** (Authorized by and implementing K.S.A. 65-3431, as amended by L. 1987, Ch. 295, Sec. 6; effective, T-85-42, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; revoked April 6, 1992.)

**28-31-8b. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.** 40 CFR Part 266, subparts C, F, G, and H, as in effect on July 1, 1996, are adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-9. Hazardous Waste Storage, Treatment, and Disposal Facility Permits.** (a) Incorporation. 40 CFR Part 270 and Part 124, subparts A, B, E, and F, as in effect on July 1, 1996, are adopted by reference.

(b) **Background investigation.** Before submitting any application for a hazardous waste facility permit, the applicant shall submit a disclosure statement on forms provided by the department. The disclosure statement shall include the following information:

- (1) The name of the corporation;
- (2) past corporate names;
- (3) the place or places of incorporation;
- (4) the names of officers;
- (5) the names of former officers and directors;
- (6) partnership or joint venture information;
- (7) ownership and debt liability;
- (8) subsidiaries and stock holdings;
- (9) financial history;
- (10) employee data;
- (11) experience and credentials;
- (12) licenses and permits;
- (13) environmental violations history;

(14) environmental judgments and litigation; and  
(15) criminal proceedings involving the applicant or the corporation. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

#### **28-31-10. Hazardous Waste Monitoring Fees.**

##### **(a) Hazardous waste storage facility.**

Each hazardous waste storage facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- |                               |          |
|-------------------------------|----------|
| (1) On-site storage facility  | \$ 2,500 |
| (2) Off-site storage facility | \$ 3,500 |

(b) **Hazardous waste treatment facility.** Each hazardous waste treatment facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- |                                   |          |
|-----------------------------------|----------|
| (1) On-site treatment facility    | 4,000    |
| (2) Off-site treatment facility   | \$ 5,000 |
| (3) Off-site incinerator facility | \$10,000 |

(c) **Hazardous waste disposal facility.** Each hazardous waste disposal facility shall pay to the department an annual monitoring fee before January 1 of each year. This fee shall be based on the following schedule:

- |   |          |
|---|----------|
| (1) On-site landfill or underground injection well  | \$10,000 |
| (2) Off-site landfill or underground injection well | \$15,000 |

(d) **Facilities subject to post-closure care.** Each hazardous waste storage, treatment, or disposal facility subject to post-closure care shall pay an annual fee. This fee shall become applicable upon receipt by the department of the certification of closure specified in 40 CFR Part 264.115 or 40 CFR Part 265.115, as in effect on July 1, 1996. This fee shall be paid to the department before January 1 of each year. This fee shall be based on the following schedule:

- |   |         |
|---|---------|
| Facilities subject to post-closure care | \$4,000 |
|---|---------|

(e) **Multiple activities.** Each facility conducting more than one of the hazardous waste activities addressed in subsections (a), (b), (c), and (d) of this regulation shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted. Each facility that is subject to post-closure care and has no remaining active storage, treatment, or disposal units shall be subject only to the monitoring fee specified in subsection (d).

(f) **Hazardous waste transporters.** Each hazardous waste transporter shall pay an annual monitoring fee. The hazardous waste transporter shall pay this fee at the time the transporter registers with the department in accordance with K.A.R. 28-31-6(b), and before January 1 of each year thereafter. This fee shall be based on the following schedule:

Transporter	\$250
-------------	-------

(g) **Hazardous waste generators.**

(1) Before March 1 of each year, each EPA generator shall pay to the department an annual monitoring fee for all hazardous waste generated during the previous calendar year. This fee shall be based on the following schedule:

Total Yearly Quantity Generated	Monitoring Fee
Less than or equal to 5 tons	\$100
Greater than 5 tons but less than or equal to 50 tons	\$500
Greater than 50 tons but less than or equal to 500 tons	\$1,000
Greater than 500 tons	\$5,000

(2) Hazardous waste that is reclaimed on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees. This exemption shall not apply to hazardous waste residues produced during reclamation. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999.)

**28-31-10a. Off-Site Hazardous Waste Treatment Fees.** (a) Each off-site hazardous waste treatment facility shall pay fees proportionate to the quantity of hazardous waste treated, subject to the caps set forth in K.S.A. 1996 Supp. 65-3431, subsection (x). These fees shall be based upon the following schedule:

Hazardous Waste Category	Fee
Dioxin	\$20 per ton
Fewer than 5,000 British Thermal Units (BTUs) per pound	\$10 per ton
Equal to or greater than 5,000 BTUs per pound	\$2 per ton

For the purpose of calculating these fees, these definitions shall apply.

(1) "Dioxin" shall mean hazardous wastes carrying EPA hazardous waste numbers F020, F021, F022, F023, F026, F027, or F028, or any combination of these hazardous waste numbers. "Ton" shall mean 2,000 pounds.

(b) Payment of the treatment fees assessed under subsection (a) of this regulation shall be made quarterly. The quarterly fee shall be paid on or before the last day of April, July, October, and January for the preceding three-month period ending the last day of March, June, September, and December.

(c) **Each treatment fee payment shall meet these requirements:**

(1) be made by check or money order made payable to the "Kansas department of health and environment--attention: environmental permit fund"; and

(2) be accompanied by a form, furnished by the department and completed by the facility operator. The form shall state the total weight of hazardous wastes treated during the reporting period and shall provide sufficient information to verify findings that a treatment process qualified as material or energy recovery. (Authorized by and implementing K.S.A. 1996 Supp. 65-3431; effective April 6, 1992; amended July 7, 1997.)

**28-31-11. Hazardous Waste Perpetual Care Trust Fund Fees.** (a) **Hazardous waste disposal facilities.** Each active hazardous waste disposal facility

shall pay a monthly perpetual care trust fund fee, based on the poundage of hazardous waste disposed at the facility.

(1) The poundage of waste shall be determined prior to addition of those materials which are added at the disposal facility to treat the wastes.

(2) The fee shall be \$0.005 per pound of hazardous waste disposed in landfills, \$0.00000455 per pound of hazardous waste disposed by deep well injection and \$0.001 per pound of hazardous waste disposed by other methods.

(3) All calculations of this fee shall apply to the total hazardous waste poundage.

**(b) Monthly reports.** On or before the 20th day of each month, the operator of any hazardous waste disposal facility shall prepare and submit to the department a statement giving the following information:

(1) The name and location of the operator;

(2) the total poundage of hazardous waste disposed at the facility during the preceding calendar month; and

(3) a check for the calculated fee which is payable to the department and designated for the hazardous waste perpetual care trust fund. (Authorized by and implementing K.S.A. 65-3431; effective E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended April 25, 1994.)

**28-31-12. Inspections.** (a) Upon presentation of credentials and stating the purpose of the visit, the following may be performed at any reasonable hour of the day by the secretary or any duly appointed representative:

(1) Enter any factory, plant, construction site, hazardous waste storage, treatment, or disposal facility, or other location where hazardous wastes may potentially be generated, stored, treated, or disposed, and inspect the premises to gather information regarding existing conditions and procedures;

(2) obtain samples of actual or potential hazardous waste from any person or from the property of any person, including samples from any vehicle in which hazardous wastes are being transported;

(3) stop and inspect any vehicle, if there is

reasonable cause to believe that the vehicle is transporting hazardous wastes;

(4) conduct tests, analyses, and evaluations of wastes to determine whether or not the wastes are hazardous wastes and whether or not the requirements of these regulations are being met;

(5) obtain samples from any containers or facsimiles of container labels;

(6) inspect and copy any records, reports, information, or test results relating to wastes generated, stored, transported, treated, or disposed;

(7) photograph or videotape any hazardous waste management facility, device, structure, or equipment;

(8) drill test wells or groundwater monitoring wells on the property of any person where hazardous wastes are generated, stored, transported, treated, disposed, discharged, or migrating off-site and obtain samples from the wells; and

(9) conduct tests, analyses, and evaluations of soil, groundwater, surface water, and air to determine whether the requirements of these regulations are being met.

**(b)** If, during the inspection, unsafe or unpermitted hazardous waste management procedures are discovered, the operator of the facility may be instructed by the secretary's representative to retain and properly store hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the waste has been identified and the department determines the proper procedure to be used in handling the waste.

**(c)** When obtaining samples, the facility operator shall be allowed to collect duplicate samples for separate analyses.

**(d)** During the inspection, all reasonable security, safety, and sanitation measures employed at the facility shall be followed by the secretary's representative.

**(e)** A written report listing all deficiencies found during the inspection and stating the measures required to correct the deficiencies shall be prepared and sent to the operator. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987, amended June 4, 1999.)

**28-31-13. Variances. (a) Application.** Any person may request a variance from specific provisions of these rules and regulations by submitting an application on a form provided by the department. The applicant shall state the reasons and circumstances that support the request and shall submit all other pertinent data to support the request.

**(b) Review and public comment.** A tentative decision to grant or deny a variance shall be made within 60 days of receipt of the application by the secretary, and a notice of the tentative decision shall be published in the Kansas register and in a newspaper in the county in which the variance is requested for written public comment. Upon the written request of any interested person, a public meeting may be held to consider comments on the tentative decision. The person requesting a meeting shall state the issues to be raised and shall explain why written comments would not suffice to communicate the person's views. After evaluating all public comments, a final decision shall be made by the secretary, and a notice of the final decision shall be published in the Kansas register. If approved, all conditions and time limitations needed to comply with all applicable state or federal laws or to protect human health or safety or the environment shall be specified by the secretary. The date after which the variance shall no longer be valid shall be provided in the final decision.

**(c) Extension of a prior or existing variance.** Any person may submit a request in writing to extend a prior or existing variance. The person shall demonstrate need for continuation of the variance. The variance may be reissued or extended for another period upon finding by the secretary that the reissuance or extension of the variance would not endanger human health or safety or the environment. Review and public comment procedures shall be the same as those specified in subsection (b).

**(d) Termination of a variance.** Any variance may be terminated, if the secretary finds one or more of the following conditions:

- (1) Violation of any requirement, condition, schedule, or limitation of the variance;
- (2) operation under the variance that fails to meet the minimum requirements established by state or federal

law or regulations; or

(3) operation under the variance that is unreasonably threatening human health or safety or the environment. Written notice of termination shall be provided to the person granted the variance.

**(e) Emergency variances.** If an incident involving hazardous waste requires immediate action to protect human health or safety or the environment, an emergency variance may be granted by the department from all requirements or any specific requirement of the Kansas hazardous waste regulations. The emergency variance shall remain in effect until the incident no longer presents an immediate hazard to human health or safety or the environment. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1982; amended T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999.)

**28-31-14. Land Disposal Restrictions.**

40 CFR Part 268, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999.)

**28-31-15. Universal waste.** 40 CFR Part 273, as in effect on July 1, 1996, is adopted by reference. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective June 4, 1999.)

**28-31-16. Used oil. (a)** 40 CFR Part 279, as in effect on July 1, 1996, is adopted by reference, except for 279.10(b)(3).

**(b)** Mixtures of used oil and hazardous waste generated by any small quantity generator shall be subject to regulation as used oil in accordance with K.A.R. 28-31-4(p)(3)(A).

**(c)** No person shall use used oil as a pesticide carrier, sealant, or coating, or for any other similar purpose.

**(d)** Each seller of more than 500 gallons per year

of lubricating oil or other oil in containers for use off the premises shall post and maintain, near the point of sale, durable and legible signs informing the public of the importance of collection and recycling of used oil. The signs shall indicate how and where used oil may be recycled and shall include locations and hours of operation of conveniently located collection facilities. (Authorized by and implementing K.S.A. 1997 Supp. 65-3431; effective June 4, 1999.) . . .

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